Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing	)	CG Docket No. 04-208

To: The Commission

COMMENTS OF USA MOBILITY, INC.

Frederick M. Joyce
Ronald E. Quirk, Jr.
Ellen E. Traupman
Venable LLP
575 7th Street, NW
Washington, DC 20004-1601
Tel: (202) 344-4000
Fax: (202) 344-8300

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USA Mobility, Inc. ("USAM"), by its attorneys, hereby submits comments on selected Commission proposals contained in its Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, released on March 18, 2005.[1] In support hereof, the following is respectfully shown:

I. Statement of Interest

USAM, through its licensed commercial mobile radio service ("CMRS") subsidiaries Metrocall USA, Inc. and Arch Wireless License Co., Inc., provides various wireless services throughout the United States, including one-way and two-way paging services. USAM (NASDAQ symbol USMO) is the largest provider of wireless paging services in the U.S.

As a CMRS provider that bills millions of customers, USAM's business will be impacted by the outcome of this proceeding. Accordingly, USAM has standing to submit comments in this proceeding.

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[1] Truth in Billing and Billing Format, National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 35 CR 1008, CC Docket No. 98-170, CG Docket No. 04-208 (Mar. 18, 2005). This item was published in the Federal Register on May 25, 2005. Accordingly, these comments are timely filed.

II. Summaries of the R&O and FNPRM

In the Second Report and Order and Declaratory Ruling ("R&O"), the Commission issued a number of rulings concerning its truth-in-billing requirements. The Commission stated, in pertinent part, that: (a) CMRS carriers will no longer be exempt from Section 64.2401(b) of its Rules, 47 C.F.R. § 64.2401, requiring that carriers' billing descriptions be brief, clear, non-misleading, and in plain language; and (b) state regulations requiring or prohibiting the use of line items for CMRS constitute rate regulation are preempted under Section 332(c)(3)(A) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 332(c)(3)(A). R&O at ¶¶ 16, 30.

In the Second Further Notice of Proposed Rulemaking ("FNPRM"), the Commission proposed and sought comment on certain measures to facilitate the ability of customers to make informed choices among competitive telecommunications services. These measures include: (a) preemption of state regulation of CMRS billing practices beyond the line items preempted pursuant to the R&O; (b) requiring that carriers list government-mandated charges in a separate section of their bills; and (c) requiring that carriers disclose the full rate of service charges - including any non-mandated line items and a reasonable estimate of government-mandated surcharges - to the consumer at the point of sale. FNPRM at ¶¶ 38-55.

III. Summary of USAM's Comments

With respect to the preemption issue, USAM agrees that the Commission should preempt state regulation of CMRS billing practices; preemption of local regulation is also appropriate. In 1993, Congress amended the Act with the intention of governing CMRS under uniform federal law, because inconsistent state regulation could impede the growth of CMRS and hinder competition in the wireless marketplace. Preemption of state and local billing regulations is

warranted because, inter alia, inconsistent state and local billing regulations would cause CMRS carriers to incur unnecessary costs and cause confusion in customer billing practices that would be harmful to consumers. In addition, only the FCC should enforce its truth-in-billing rules. State regulatory agencies are generally unfamiliar with CMRS services, particularly paging services, and the FCC is the only entity that has the expertise to enforce these rules uniformly and fairly.

Regarding the proposed requirement that carriers list government-mandated charges separate from other charges on their bills; such a requirement is not necessary. Enforcement of the existing truth-in-billing rules will serve the Commission's goals of ensuring that customers have the necessary information to accurately assess their bills and prevent misleading billings by carriers.

Regarding the proposal that CMRS carriers should be required to disclose the full rate of their services to customers at the point of sale, due to particularly fluctuating and new state, local, and federal taxes, fees, and surcharges on CMRS carriers, CMRS carriers need to have the flexibility to add new line items to respond to unanticipated additional costs.

IV. The Commission Should Preempt State and Local CMRS Billing Regulations

In the FNPRM, the Commission states that there are "clearly discernable federal objectives that may be undermined by states' 'non-rate' regulation of CMRS carriers billing practices"; it seeks comment on whether it should preempt state regulation of CMRS billing practices "beyond the 'line item' regulations" it adopted in the R&O. FNPRM at ¶ 50. USAM concurs with the Commission's preliminary conclusion that state regulation of CMRS billing practices would impede important federal objectives. Consequently, the Commission should preempt state and local regulation of non-line item billing practices of CMRS carriers.

As the Commission noted, it is widely recognized that federal law preempts state law where state law impedes the objectives of Congress or federal regulations. FNPRM at ¶ 35.[2] In 1993, Congress amended the Act to ensure that the emerging wireless industry would be governed by a uniform, federal regulatory regime.[3] Among other things, Congress enacted Section 332(c)(3)(A), which prohibits states from regulating the entry of or rates charged by CMRS carriers.[4] The purpose of Section 332(c)(3)(A) of the Act reflects Congress' intent that CMRS should be governed by federal law, because CMRS is inherently an interstate service and state regulation of CMRS carriers would be a barrier to the development of competition.[5]

When promulgating rules to implement Section 332(c)(3)(A) of the Act, the Commission stated that a primary objective of federal preemption regarding CMRS was to prevent interference with the deployment of nationwide wireless communications services and competition in the wireless marketplace: "[S]tate regulation could inadvertently become a burden to the development of this competition [and deployment of wireless services]. Our preemption rules will help promote investment in the wireless infrastructure by preventing burdensome and unnecessary state regulatory practices that impede our federal mandate for regulatory parity."[6]

Likewise, preemption is warranted here because it would be burdensome and costly for CMRS carriers, particularly paging carriers, to be required to comply with a patchwork quilt of state and local billing mandates. Inconsistent state and local billing regulations would require paging carriers to incur administrative, accounting, and other costs that, due to the very thin profit

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[2] Id. citing City of New York v. FCC, 486 U.S. 57, 64 (1988); United States v. Shimer, 367 U.S. 374, 381-82 (1961); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Ninth Report, 19 FCC Rcd 20597, ¶ 9 (2004) ("Ninth Report").

[3] See Omnibus Budget Reconciliation Act of 1993 ("OBRA"), Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 392 (1993).

[4] See 47 U.S.C. § 332(c)(3)(A).

[5] See H.R. Conf. Rep. No. 103-213 at 480-81, U.S.C.C.A.N. 378, 1169-70 (1993).

[6] See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, ¶ 23 (1994) ("CMRS R&O").

margins of these carriers, would substantially harm their businesses. The harmful impact of duplicative and cumbersome state regulations is particularly worrisome given the current state of the paging industry. The paging industry has suffered a precipitous drop in the number of subscribers since its peak in 1999. In 1999, there were an estimated 45.8-52.5 million paging units in service ("UIS") in the United States.[7] By 2004, there were only an estimated 12 million UIS in the U.S.[8] Similarly, the average revenue per paging unit ("ARPU") has decreased significantly in recent years, and, it is projected that revenues for paging carriers will continue to decline.[9]

Mobile telephony companies have been providing wireless data services for several years;[10] as a result, paging carriers have been forced to keep their monthly service charges very low in order to retain their customer bases.[11] Paging companies have certain "core customers" such as health care providers and emergency personnel, who utilize paging mainly due to its low cost.[12] Being forced to comply with inconsistent state and local billing regulations would substantially increase paging carriers' costs, making their services less competitive compared to other wireless services, and, leading to higher prices for consumers.

The costs of complying with multiple state regulations can be substantial for wireless carriers.[13] With low ARPUs of approximately $6.00 for numeric pagers and $13.00 for

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[7] See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fifth Report, FCC 00-289 (2000) ("Fifth Report") at 56.
[8] See "Why Carriers Must Push New Services, Subscriber Gear," Wireless Data News (January 30, 2004).
[9] See "State of U.S. Paging and Advanced Messaging Industry," The Strategis Group, 2001 ("Strategis Report") at 46.
[10] Data provided by the Commission shows that there are at least five mobile telephony carriers that provide data services in most local and regional markets. See Implementation of Section 6002 of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eighth Report, FCC 03-150 at ¶ 199 (2003) ("Eighth Report").
[11] Id. at 45; see also "Carriers Load on Minutes to Lure Subscribers," Wireless Week, Mar. 4, 2002.
[12] See Eighth Report at ¶ 142.
[13] See e.g., "Taxes and Regulation: The Effects of Mandates on Wireless Phone Users," Progress on Point (Oct. 2003) ("Progress on Point Report"). California state regulations on wireless communications, including billing requirements, are estimated to impose costs on wireless carriers in the amount of $3.86 per month. Id. at 5.

alphanumeric pagers,[14] even a modest increase in costs caused by state billing regulations can adversely affect a sizeable percentage of paging carriers' revenues.

Moreover, paging carriers and other CMRS providers are already subject to a number of government fees, including universal service fund ("USF") contributions, regulatory fees, telecommunications relay service ("TRS") fees, state surcharges, and various taxes. CMRS carriers also incur substantial costs to comply with federal mandates such as wireless local number portability ("WLNP"), number pooling, Communications Assistance for Law Enforcement Act ("CALEA"), and Enhanced 911 ("E911").[15] It is estimated that the costs of complying with federal and state regulations and taxes can increases the average CMRS bill by up to $9.50 per month, depending on the type of service and the state in which the carrier does business.[16]

The need for uniform, federal regulations for CRMS billing is underscored by a recent letter to the Commission by a number of state public utilities' officials. Those officials explained why allowing each state to establish its own billing guidelines for wireless carriers would be unworkable and would not serve the public interest:

> The recent California Bill of Rights went so far as to dictate the font size providers were to use. Imagine Florida requiring a font size of Times New Roman 12, but New York requiring Arial 11. As a more substantial example, imagine Maryland permitting the disclosure of a certain fee pursuant to state authority, but Texas prohibiting such disclosure. The very real potential for conflicting state regulations, and the impact (financial and otherwise) of complying with a patchwork of rules does not serve the consumers' interest. Regulators may feel good about having addressed an issue – but consumers don't necessarily win when multiple jurisdictions, with the best of intentions, impose additional regulatory hurdles that ultimately cost consumers.[17]

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[14] See Strategis Report at 46.
[15] See Progress on Point Report at 2-3
[16] Id. at 4.
[17] See Letter to Marlene H. Dortch, Secretary, FCC, from Ella Germani, Chairman, Rhode Island Public Utility Commission; Robert K. Sahr, Vice-Chairman, South Dakota Public Service Commission; Ellen C. Williams, Vice Chairman, Kentucky Public Service Commission; Randy Bynum, Commissioner, Arkansas Public Service Commission; James Connelly, Commissioner, Massachusetts Dept. of Telecommunications & Energy; Kevin Cramer, Commissioner, North Dakota Public Service Commission; Charles M. Davidson, Commissioner, Florida Public Service Commission; Susan P. Kennedy, Commissioner, California Public Utility Commission; Connie Murray, Commissioner, Missouri Public Service Commission; and Anthony Rachel, Commissioner, District of

The American Association of Retired Persons ("AARP") has proposed model legislation (which it is encouraging states to adopt) that provides that all notices to customers must be in writing (on bills, bill inserts, or separately by first class mail) and in 12-point type or greater.[18] California law stipulates that wireless carriers' bills must be written in 10-point font and that any changes in subscriber agreements must include the exact phrase, "Your Rates, Terms, or Services Have Changed."[19] Legislation introduced in New York would require wireless carriers to prepare and distribute maps as part of their billing services, detailing their coverage areas on a county-specific basis, identifying all geographic areas larger than four square miles where service is not provided and showing whether or not a customer can receive wireless service at the customer's primary residence.[20]

For all these reasons, the Commission should preempt state and local billing regulations that single out CMRS services. States should not be permitted to increase the already substantial governmental financial burden on CMRS carriers by imposing additional billing regulations. And, preemption is necessary to fulfill the FCC's mandate of promoting rapid and efficient nationwide communications services.[21]

Regarding the Commission's inquiry as to whether states should be permitted to enforce billing rules developed by the FCC (FNPRM at ¶ 51), USAM submits that only the Commission should enforce its billing rules. Although, as the Commission points out, Section 64.1110 of the

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Columbia Public Service Commission, CG Docket No. 04-208, at 8 (March 3, 2005) (emphasis in original).
[18] See The Telecommunications Act of 1996: A Case of Regulatory Obsolescence?, Thomas J. Sugrue, Esq. & Sara F. Leibman, Esq. (2005) (citation omitted).
[19] Id. at 6 (citation omitted).
[20] Id. (citation omitted).
[21] See 47 U.S.C. § 151.

Commission's Rules permits state regulatory commissions to administer FCC rules against slamming (Id.),[22] states should not be permitted to administer federal billing rules.

The reasoning behind the Commission's decision to permit state regulatory agencies to administer its slamming rules is unique: (a) Section 258(a) of the Act expressly states Congressional intent to promote a federal-state partnership for deterring slamming; and (b) state commissions have consequently developed the appropriate expertise to handle slamming complaints.[23] Indeed, Section 258(a) of the Act states that state commissions must not be precluded from enforcing slamming rules respecting intrastate service.[24] And, the General Accounting Office ("GAO") requires that all state commissions have procedures in place for handling slamming complaints.[25] As a result of these federal mandates, state regulatory agencies have appropriate expertise and legal authority to handle slamming matters.

Conversely, due to their nationwide aspect, and Section 332's preemptive impact, CMRS, and particularly paging services, have only rarely been subject to state regulatory authority. In fact, a number of states have specifically exempted paging services from regulation under their public utilities codes.[26] Moreover, unlike slamming issues, CMRS billing practices often involve interstate matters such as nationwide rate plans and federal regulatory mandates. Consequently, state regulatory agencies are simply not well equipped to understand or enforce FCC billing rules for CMRS, particularly paging services.

It is also unclear that the FCC has authority to delegate these enforcement powers to the states. The U.S. Supreme Court has stated that, except under certain circumstances where

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[22] 47 C.F.R. § 64.1110.
[23] See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes to Consumers Long Distance Carriers, Corrected Version First Order on Reconsideration, 15 FCC Rcd 8158, ¶¶ 24-25 (2000) ("Slamming Order").
[24] See 47 U.S.C. § 258(a).
[25] See Slamming Order at ¶ 25 (citation omitted).
[26] See e.g., C.R.S. 29-1-1002 (Colorado); KY Stat. 139.100(3)(e) (Kentucky); RsMO 386.020(53) (Missouri); and WY Stat. 37-15-104 (Wyoming).

Congress has spoken on the matter [such as the slamming provision of Section 258 of the Act], federal agencies only, not the states, may enforce federal rules.[27] A federal agency such as the FCC, which is charged with enforcing the Act,[28] has the expertise to enforce rules that it promulgates; state regulatory authorities do not.[29] The United States Court of Appeals for the District of Columbia recently held that while federal agency officials may subdelegate their decision-making authority to subordinates, absent evidence of contrary congressional intent, they may not subdelegate to outside entities, whether private or sovereign, absent affirmative evidence of authority to do so.[30]

V. The Commission Should Not Require Separation of Government-Mandated Charges on Bills

The Commission proposes to require telecommunications carriers to separate government-mandated charges from all other charges on bills. FNPRM at ¶ 43. The Commission contends that such a requirement will allow consumers to assess bills accurately respecting government charges, and discourage carriers from misleading customers by recovering other operating costs disguised as government-mandated charges. Id.

USAM agrees with the Commission's goals of providing customers with clear information for accurately assessing bills and discouraging carriers from misleading customers. Nevertheless, these goals do not warrant the Commission requiring carriers to separate out government-mandated charges on their bills.

The Commission's existing truth-in-billing rules require that each billed charge be accompanied by "brief, clear, non-misleading plain language" description.[31] Carriers are required

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[27] See Alaska Dept. of Environmental Conservation v. E.P.A., 540 U.S. 461, 492-93 (2004).
[28] See 47 U.S.C. § 151.
[29] See Alaska Dept. of Environmental Conservation, 540 U.S. at 493.
[30] See United Telecom Association v. FCC, 359 F.3d 554, 566-67 (D.C. Cir. 2004).
[31] See 47 C.F.R. § 64.2401(b).

to accurately describe each charge on their bills with sufficient detail to permit their customers to accurately assess what they are being charged for.[32] Carriers are also required to provide a toll-free number on each bill that connects to an inquiry contact, which must possess sufficient information to answer questions about the customers' bills.[33] Hence, any carrier that complies with the existing rules will provide bills containing: (a) descriptions of government-mandated charges that allow their customers to readily delineate them as such; and (b) contact information of knowledgeable parties who can help customers with any parts of their bills that they do not understand.

Requiring a separate section for government-mandated charges will not necessarily help customers understand their bills better, because a bill from a non-compliant carrier containing a confusing description of charges will be just as confusing when placed in a "government section." Conversely, a bill from a compliant carrier will be descriptive enough so that the government-mandated charges will be readily ascertainable, without any separate government section.

Accordingly, there is no need for the Commission to require a separate section on each bill for government-mandated charges; enforcement of the existing truth-in-billing rules will serve the Commission's goals of ensuring that customers have the necessary information to accurately assess their bills, and prevent misleading billings by carriers. Additionally, such a requirement will increase carriers' operating costs, as many of them will be forced to overhaul the layout of their bills. Carriers should be permitted to voluntarily format their bills so that all government-mandated charges are separated out from the other charges, but the Commission should not mandate any particular billing format.

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[32] Id.
[33] See 47 C.F.R. § 64.2401(d).

VI. The Commission Should be Flexible Regarding Any Point-of-Sale Obligations Imposed on CMRS Carriers

The Commission proposes that CMRS carriers should be required to disclose the full rate of their services, including any non-mandated line items and a reasonable estimate of government-mandated charges to customers, at the point of sale, and, that such disclosure must occur before the customers sign any contract for the carriers' services. FNPRM at ¶¶ 55-56. USAM disagrees with the Commission's proposal to adopt this rule. As a practical matter, few CMRS carriers could get away with not disclosing this information to customers at the point of sale, and they do make these disclaimers. Nevertheless, CMRS carriers need the flexibility to add new line items to respond to unanticipated additional costs that could occur when federal, state, or local jurisdictions decide to adopt additional taxes or fees.

CMRS contracts typically contain initial terms of one to two years, with options to renew for additional one or two year terms after the initial terms expire. CMRS carriers are subject to regular increases for various government-imposed fees,[34] and state and local taxes.[35] For example, between January 2003 and April 2004, the average effective state and local taxes on wireless services increased from 10.2 percent to 10.74 percent.[36] The tax increases were due, in part, to the fact that many states and localities have expanded the use of telecommunications-specific taxes on wireless services, which means that wireless tax increases are likely to continue.[37]

Between December 1, 2003 and April 1, 2004, Pennsylvania wireless customers saw their wireless taxes more than double, from 6.5 percent to 14 percent, due in large part to a new five percent gross receipts tax on wireless and long distances services, and a $1.00 per month E-911

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[34] See Progress on Point Report at 48.
[35] See "The Excessive State and Local Tax Burden on Wireless Telecommunications Service, State Tax Notes (July 19, 2004) at 181.
[36] Id. at 184.
[37] Id. at 181.

tax.[38] South Dakota imposed an additional four percent gross receipts tax on wireless services in 2003.[39] Also in 2003, Prince George's County, Maryland, imposed an eight percent local tax on wireless services to fund schools, and Montgomery County, Maryland, imposed a $2 monthly tax on wireless service.[40] Various cities in several other states are attempting to impose additional taxes and fees on wireless services.[41]

The recurring increases in regulatory costs and taxes imposed on CMRS carriers, and changes in the cost of providing service, require CMRS carriers to have the flexibility to raise their rates after a sale has been made, provided their customers have agreed in advance to pay for these costs on a "pass through" basis. The FCC's proposed rule does not account for these post-sale eventualities, and will consequently create a compliance nightmare for carriers and the FCC. Instead, the existing truth-in-billing requirements will suffice. If a customer has a legitimate complaint that his or her rates have been changed post-sale, in a manner inconsistent with the bills and contract, the existing rules give that customer adequate rights and remedies before the FCC.

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[38] Id. at 185.
[39] Id.
[40] Id.
[41] Id.

VII. Conclusion

For all the foregoing reasons, USAM submits that the Commission should: (a) preempt state and local CMRS billing regulations; (b) not require carries to separate out government-mandated charges on their bills; and (c) should not adopt any new point-of-sale disclosure regulations.

Respectfully submitted,

USA MOBILITY, INC.

By: _____

Frederick M. Joyce
Ronald E. Quirk, Jr.
Ellen E. Traupman

Its Attorneys

Venable LLP
575 7th Street, NW
Washington, DC 20004-1601
Tel: (202) 344-4000
Fax: (202) 344-8300

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